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In the Supreme Court of the United States

OCTOBER TERM, 1975

THOMAS S. KLEPPE, SECRETARY OF THE INTERIOR,
APPELLANT

v.

STATE OF NEW MEXICO, ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW MEXICO

BRIEF FOR THE SECRETARY OF THE INTERIOR

ROBERT H. BORK,
Solicitor General,
PETER R. TAFT,
Assistant Attorney General,
A. RAYMOND RANDOLPH, JR.,
Deputy Solicitor General,
WILLIAM F. SHEEHAN, III,
Assistant to the Solicitor General,
EDMUND B. CLARK,
DIRK D. SNEL,
Attorneys,
Department of Justice,
Washington, D.C. 20530.

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OPINION BELOW

The opinion of the district court (J.S. App. A, pp. 1a-6a) is not yet reported.

JURISDICTION

The judgment of the three-judge district court was entered on February 28, 1975 (J.S. App. B, pp. 7a-8a). The notice of appeal to this Court was filed on March 28, 1975 (J.S. App. C, p. 9a). The first amended

judgment of the district court was entered on March 31, 1975 (J.S. App. D, pp. 10a–11a). The supplemental notice of appeal was filed on April 14, 1975 (J.S. App. E, pp. 12a–13a). This Court noted probable jurisdiction on October 6, 1975 (App. 93). The jurisdiction of this Court rests on 28 U.S.C. 1252 and 1253.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

1. Article IV, Section 3, Clause 2 of the United States Constitution (the "Property Clause") provides:

> The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States; and nothing in this Constitution shall be so construed as to Prejudice any Claims of the United States, or of any particular State.

2. Article I, Section 8, Clause 3 of the United States Constitution (the "Commerce Clause") provides in part:

> The Congress shall have power * * * [t]o regulate Commerce with foreign Nations, and among the several States * * *.

3. The Wild Free-Roaming Horses and Burros Act, 85 Stat. 649–651, 16 U.S.C. (Supp. III) 1331–1340, enacted December 15, 1971, is reproduced in Appendix F of the Jurisdictional Statement.

4. The revelant provisions of Sections 47–14–1, 47–14–5, and 47–23–2(A) of the New Mexico Statutes Annotated are set forth in Appendix G of the Jurisdictional Statement.

QUESTION PRESENTED

Whether the Wild Free-Roaming Horses and Burros Act, which protects unbranded and unclaimed horses and burros on public lands of the United States from capture, harassment, or death, exceeds the powers conferred upon Congress by the Property and Commerce Clauses of the Constitution.

STATEMENT

At issue in this case is the constitutionality of the Wild Free-Roaming Horses and Burros Act, 16 U.S.C. (Supp. III) 1331–1340 (J.S. App. F, pp. 14a–20a). That Act defines wild free-roaming horses and burros to mean "all unbranded and unclaimed horses and burros on public lands of the United States" (Section 2(b), 16 U.S.C. 1332(2)(b)). Section 1 of the Act establishes a policy of protecting these animals "from capture, branding, harassment, or death," and provides that "to accomplish this they are to be considered in the area where presently found, as an integral part of the natural system of the public lands" (16 U.S.C. 1331).

The Act provides that all wild free-roaming horses and burros on the public lands administered by the Secretary of the Interior through the Bureau of Land Management are committed to the jurisdiction of the Secretary, who is "directed to protect and manage [the animals] as components of the public lands * * *

in a manner that is designed to achieve and maintain a thriving natural ecological balance on the public lands" (Section 3(a), 16 U.S.C. 1333(a)).[1] The Act makes it a crime to remove a protected horse or burro from public lands onto privately owned land, the private use without the Secretary's permission, or maliciously to kill or harass such an animal, or to process its remains into commercial products (Section 8(a), 16 U.S.C. 1338(a)). If horses or burros "stray from [redacted] public lands onto privately owned land, the owners of such land may inform the nearest Federal marshall or agent of the Secretary, who shall arrange to have the animals removed" (Section 4, 16 U.S.C. 1334).[2]

On June 26, 1974, Congress held a hearing to determine how the Act had been administered up until then, and how the agencies responsible for its administration intended to enforce it in the future. Representatives from the Department of the Interior testified at length concerning the studies in progress respecting the population of wild free-roaming horses and burros and their relationship to the ecosystems in which they were found, and the feasibility of establishing federal ranges in which competing uses of the land would be prohibited.[3] These topics were also discussed in "A Report to Congress by the Secretary of the Interior and the Secretary of Agriculture on Administration of the Wild Free-Roaming Horse and Burro Act," which was submitted to Congress in June 1974 pursuant to the reporting provisions of Section 10 of the Act (16 U.S.C. 1340). In that report (p. 30)[3a] it was noted that the number of wild horses and burros on lands managed by the Bureau of Land Management appeared to be greater than previously estimated, although the number on Forest Service lands appeared to be the same. The report also stated (*ibid.*) that wild free-roaming horses and burros "are not vanishing breeds, although there are marginal herds."

With regard to New Mexico in particular, the report estimated the population of wild free-roaming burros on federal public lands in that state to be 85 (p. 31). The state director of the Bureau of Land Management in September 1973 stated that wild horses and burros were "proving almost unknown on federal public lands in New Mexico" (Pl. Exh. 12; App. 83).[4]

[1] The Act applies with equal force to wild free-roaming horses and burros on public lands administered by the Secretary of Agriculture through the Forest Service (Section 2, 16 U.S.C. 1332).

[2] A private landowner is not prohibited by the Act from maintaining wild free-roaming horses and burros on his land provided that he protects them from harassment and did not willfully entice them from the public lands (Section 4, 16 U.S.C. 1334). Sale of a wild free-roaming horse or burro so maintained, or of the remains thereof, is prohibited (Section 8(a)(5), 16 U.S.C. 1338(a)(5)).

[3] Hearing on the Administration of Public Law 92-195—the Wild Free-Roaming Horse and Burros Protection Act of 1971, Before the Senate Committee on Interior and Insular Affairs, 93d Cong., 2d Sess. 48-92 (1974).

[3a] We are lodging a copy of the report with the Clerk of this Court.

[4] The director of the New Mexico Livestock Board testified that "there could be seven or eight hundred burros" in New Mexico (App. 39), but this estimate included "all the animals on all of the lands in the State of New Mexico" (App. 38), and thus would include burros not subject to federal protection under the Act.

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Section 6 of the Act (16 U.S.C. 1336) authorizes the Secretary to promulgate regulations [5] and to enter into cooperative agreements with other landowners and states and local governmental agencies to further the Act's purposes. On August 7, 1973, the Secretary executed such an agreement (Def. Exh. A; App. 85) with the State of New Mexico through the New Mexico Livestock Board, the state agency charged with enforcing the New Mexico Estray Law (N. Mex. Stat. Ann. §§ 47–14–1, *et seq.* (1953)). Under this agreement, the state Livestock Board recognized the authority of the Secretary of the Interior [6] to manage and protect wild free-roaming horses and burros on the public lands of the United States within the state (App. 86). The agreement set up a procedure for evaluation of claims by private persons to ownership of such animals found on public lands where wild free-roaming horses and burros are known or suspected to exist (*id.* at 87).

On November 15, 1973, however, the New Mexico Livestock Board terminated the agreement (Pl. Exh. 4; App. 71) and advised the Secretary of its intent

> * * * to exercise all regulatory impoundment and sale powers which it derives from the New Mexico Estray Law, over all estray horses, mules or asses found running at large upon public or private lands within New Mexico * * *.

[5] The regulations of the Secretary of the Interior appear at 43 C.F.R. Part 4710, and of the Secretary of Agriculture at 36 C.F.R. 231.11.

[6] And the authority of the Secretary of Agriculture with respect to public lands administered by the Forest Service.

> This includes the right to go upon Federal or State lands to take possession of said horses or burros, should the Livestock Board so desire. [App. 72.]

The Livestock Board additionally asserted that the state had exclusive ownership and regulatory powers over all non-migratory wild animals within the state's boundaries "whether said animals are on Federal or State lands" and that "the Federal government has no right to control, regulate or assert ownership of these animals" (App. 72–73).

On February 1, 1974, a New Mexico rancher was informed by the Department of the Interior's Bureau of Land Management that several unbranded burros had been seen near Taylor Well, which is located on federal property (*id.* at 48–49). The rancher, who was engaged in the cattle business, had a federal grazing permit [7] allowing him to run two-hundred head of cattle on approximately 8,000 acres of federal land administered by the BLM, including the Taylor Well area (*id.* at 44, 46–47, 74). On February 4, 1974, after visiting the Taylor Well area and observing the burros, the rancher complained to the New Mexico Livestock Board that the burros were interfering with his livestock operation by molesting his cattle and eating their feed (*id.* at 32–33, 50, 75).[8]

On February 11, 1974, agents of the New Mexico Livestock Board, purportedly acting pursuant to the

[7] See Taylor Grazing Act, 48 Stat. 1270, as amended, 43 U.S.C. 315b.

[8] The rancher testified that for at least the past 29 years approximately 8 to 10 burros had inhabited the fee land to the east of the federal property (*id.* at 48).

New Mexico Estray Law, rounded up and removed 19 unbranded and unclaimed burros found in the vicinity of Taylor Well (Pl. Exh. 5; App. 74). Each burro was on the public lands of the United States when it was captured and taken away (*id.* at 76) and the director of the state Livestock Board conceded that the animals fit the description of "wild free-roaming" burros under Section 2(b) of the Act (16 U.S.C. 1332(2)(b)) (*id.* at 43).

One week later, on February 18, 1975, the state Livestock Board sold the burros at a public auction (*id.* at 77). The director of the Livestock Board testified that the animals are usually sold at such auctions to private individuals or companies, including food processors, ranches and horse traders (*id.* at 39–40). One of the respondents here—Claude Foster—allegedly purchased three of the burrows (*id.* at 8).[9]

After learning of the round-up and sale, the Bureau of Land Management, asserting jurisdiction over the burros under the Wild Free-Roaming Horses and Burros Act, demanded that the state Livestock Board recover the animals and return them to the public lands (*id.* at 36).

In March 1974, appellees (the State of New Mexico, the New Mexico Livestock Board, the Board's director, and a purchaser of three of the burros) brought this action in the United States District Court for the District of New Mexico. The complaint sought a declaratory judgment that the Wild Free-Roaming

[9] The identity of the purchaser of the remaining burros is not shown in the record.

Horses and Burros Act is unconstitutional and an injunction against the Act's enforcement (App. 6). A three-judge court was convened pursuant to 28 U.S.C. 2282.

After an evidentiary hearing held September 30, 1974 (App. 24–63), the district court on February 28, 1975, ruled that the Wild Free-Roaming Horses and Burros Act is unconstitutional and permanently enjoined the Secretary of the Interior from enforcing its provisions (J.S. App. A, pp. 1a–6a).[10] The court held that the Act "conflicts with * * * the traditional doctrines concerning wild animals" (*id.* at 3a), and that Congress is without constitutional authority under the Property Clause to regulate animals found on federal lands unless such regulation is necessary for the "*protection* of the public lands from damage of some kind" (*id.* at 5a; emphasis in original). Here, however, "[t]he statute is aimed at protecting the wild horses and burros, not at protecting the land they live on," and "[t]here is no Congressional finding nor any evidence to indicate that wild horses and burros are damaging the public lands" (*ibid.*). The court also held that the Act cannot be sustained as an exercise of congressional authority under the Commerce Clause, because "all the evidence establishes that the wild burros in question here do not migrate across state lines" and "Congress made no findings to indicate that

[10] On March 7, 1975, the district court stayed its injunction pending further order of the court (App. 90) and a formal stay motion from the United States. Such a motion was filed on March 18, 1975 (App. 91); it has not been acted on and the original stay remains in effect.

it was in any way relying on the Commerce Clause in enacting this statute" (*id.* at 5a–6a).[11]

ARGUMENT

THE WILD FREE-ROAMING HORSES AND BURROS ACT DOES NOT EXCEED THE POWERS CONFERRED UPON CONGRESS BY THE PROPERTY AND COMMERCE CLAUSES OF THE CONSTITUTION

INTRODUCTION AND SUMMARY

Although an estimated two million wild horses once roamed the plains and mountains in the West, in this century their numbers have drastically dwindled.[12] Congress found in 1971 that these animals "have been cruelly captured and slain and their carcasses used in the production of pet food and fertilizer. They have been used for target practice and harassed for 'sport' and profit. In spite of public outrage, this bloody traffic continues unabated, and * * * this senseless slaughter must be brought to an end."[13] In order to prevent wild horses and burros from becoming extinct, Congress enacted the Wild Free-Roaming Horses and Burros Act, 16 U.S.C. (Supp. III) 1331–1340, which

[11] On March 31, 1975, in response to the government's motion to dismiss as parties defendant the United States and the United States Attorney, the district court amended its judgment to run against the Secretary of the Interior only (J.S. App. D, pp. 10a–11a).

[12] The Department of the Interior estimated in 1971 that less than 10,000 remain. H.R. Rep. No. 92–480, 92d Cong., 1st Sess. 3 (1971).

[13] S. Rep. No. 92–242, 92d Cong., 1st Sess. 1–2 (1971).

protects these animals on the public lands of the United States by prohibiting their removal, harassment or slaughter. Although Congress expressly found in Section 1 of the Act (16 U.S.C. 1331) that wild horses and burros are "an integral part of the natural system of the public lands," and although the legislative history of the Act demonstrates its validity under both the Property Clause and the Commerce Clause, the district court held that the Act exceeded congressional authority under the Constitution and, accordingly, that Congress lacked any power to protect these animals.

We argue in Part A, *infra,* that as an incident of its broad powers under the Property Clause to manage and preserve the public lands of the United States Congress may legislate to protect the wild animals thereon just as it may regulate other valuable components of the public land such as hydroelectric energy, timber, and minerals. In determining what are "needful" laws with respect to the public domain, Congress may, as it has done here, exercise what are essentially police powers to protect and preserve the natural resources of the public lands for the use and enjoyment of future generations. State laws that would interfere with Congress' exercise of these constitutional powers are invalid under the Supremacy Clause.

In Part B, *infra,* we argue that the Wild Free-Roaming Horses and Burros Act is also within the power of Congress to enact under the Commerce

Clause. The animals subject to the Act cross state lines; they attract persons from all parts of the country who are interested in observing and studying them; and their remains when rendered into pet food enter channels of commerce. This argument need not be reached, of course, if we are correct in our contention that the Act is constitutional under the Property Clause.

A. The Wild Free-Roaming Horses and Burros Act is constitutional under the Property Clause

The power of Congress to regulate and protect wild animals on the public lands of the United States is derived from its plenary authority over federal lands. The Property Clause of the Constitution, Article IV, Section 3, Clause 2, provides that "Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States." What constitutes a "needful" rule or regulation respecting the public lands is committed by the Constitution to the judgment of Congress. Accordingly, this Court has repeatedly held that "[t]he power over the public land thus entrusted to Congress is without limitations." *United States* v. *San Francisco,* 310 U.S. 16, 29; *United States* v. *Gratiot,* 14 Pet. 526, 537; *Gibson* v. *Chouteau,* 13 Wall. 92, 99; *United States* v. *California,* 332 U.S. 19, 27; *Federal Power Commission* v. *Idaho Power Co.,* 344 U.S. 17, 21; *Alabama* v. *Texas,* 347 U.S. 272, 273; *Ivanhoe Irrigation District* v. *McCracken,* 357 U.S. 275, 294–295.

Congress as the proprietor of the public domain acts as "trustee for the people of the United States" (*Camfield* v. *United States,* 167 U.S. 518, 524; see also *Utah Power & Light Co.,* v. *United States,* 243 U.S. 389, 409), "[a]nd it is not for the courts to say how that trust shall be administered. That is for Congress to determine" (*United States* v. *San Francisco, supra,* 310 U.S. at 29–30; see also *United States* v. *Gratiot, supra,* 14 Pet. at 537–538).

As an adjunct to and in protection of its ownership rights, Congress may, as it has done here, exercise what are essentially police powers (*Utah Power & Light Co.* v. *United States, supra,* 243 U.S. at 405; *Camfield* v. *United States, supra,* 167 U.S. at 525–526), irrespective of conflicting state claims (*United States* v. *Gratiot, supra,* 14 Pet. at 538); *McKelvey* v. *United States,* 260 U.S. 353, 359; *Hunt* v. *United States,* 278 U.S. 96, 100). It is not that the Property Clause authorizes "an exercise of a general control over public policy in a State[,] but instead only an exercise of the complete power which Congress has over particular public property entrusted to it" (*United States* v. *San Francisco, supra,* 310 U.S. at 30).

The "complete power" that Congress has over the public lands necessarily includes the power to regulate and protect the wildlife living there. The Property Clause could hardly be read otherwise. Any contrary view leads to the untenable proposition that Congress—and thus the people of the United States—must suffer the destruction and removal of wildlife

The district court in the present case, however, citing *Hunt* v. *United States, supra,* concluded that the power of Congress is limited to protecting federal lands from physical damage and does not extend to protecting wild animals found on the lands (J.S. App. A, p. 5a).[18] But *Hunt* held only that damage to the "land" was a *sufficient* basis for invoking the Property Clause; it did not hold or imply that damage is *necessary* as a basis for federal regulation.[19] The Property Clause itself empowers Congress to dispose of the public lands and the United States has

[18] Despite the district court's contrary assumption, it is hardly clear that this Act is not designed to prevent damage to the public lands. Congress expressly stated that the animals were to be managed and protected in order "to achieve and maintain a thriving natural ecological balance on the public lands" (Section 3(a), 16 U.S.C. 1333(a)). It is, however, unnecessary to dwell on this point since, as we argue *infra* at p. 17, the distinction between legislation for the purpose of protecting the land from damage and other legislation regarding the public lands is not one that the Constitution recognizes.

[19] Nor did *Chalk* v. *United States*, 114 F. 2d 207 (C.A. 4), certiorari denied, 312 U.S. 679, or *New Mexico State Game Commission* v. *Udall*, 410 F. 2d 1197 (C.A. 10), certiorari denied, 396 U.S. 961, also relied on by the district court, so imply. The latter decision is in fact direct authority for the government's position in this case. There the court upheld the Secretary's power, without interference from state authorities, to kill deer in the Carlsbad Caverns National Park as part of a research program deemed essential by him in connection with the preservation of "the scenery, natural and historic objects, and wildlife of the park" (*id.* at 1201). The court plainly and, in our view, correctly perceived the federal government's power to protect its property to extend to both "the park lands and the wildlife thereon" (*ibid.*). See also *United States* v. *States of Alaska*, 423 F. 2d 764, 768 (C.A. 9), certiorari denied, 400 U.S. 967; *Bailey* v. *Holland*, 126 F. 2d 317, 324 (C.A. 4).

authority under the Clause to conduct mining operations on such lands. Neither federal activity appears to be designed to protect the land yet both are clearly authorized by the Property Clause. See *Ashwander* v. *Tennessee Valley Authority, supra,* 297 U.S. at 332–333.

Moreover, *Hunt* concerned the authority of the federal government to reduce the deer population in national forests and game preserves in order to prevent destruction of "valuable young trees, shrubs, bushes and forage plants" caused by overbrowsing (278 U.S. at 99). If Congress is empowered to legislate in order to protect the flora on public lands it is difficult to perceive anything in the Constitution that bars Congress from acting, as it has here, to preserve the fauna on those lands.

Thus, there is no basis for a distinction between legislation designed to protect the land itself and legislation designed to protect the wild animals that depend on the land for their survival. Both are regulations "respecting" the land and so long as Congress finds them "needful," the Constitution requires no more.

Indeed, it is unnecessary to go beyond the facts of this case to demonstrate the unsoundness of the district court's contrary interpretation of the Property Clause. The state agency's seizure of the burros here was precipitated by the complaint of a rancher that the burros were interfering with his cattle, which were allowed to graze on the public lands of the United

States only because he had obtained a grazing permit under the Taylor Grazing Act, 48 Stat. 1270, as amended, 43 U.S.C. 315b. Yet if the court below is correct that Congress can legislate only to protect "the public lands from damage of some kind" (J.S. App. A, p. 5a), there would be substantial doubt whether a federal statute that permits private individuals to graze their cattle on the public lands meets that test.

In short, the Property Clause empowers Congress to forbid, as it has done here, the use of the public lands for the harassment, capturing, or killing of the wild horses and burros found thereon, and the district court erred in ruling otherwise. Regardless of any inconsistent state laws, the federal government has the power to manage wildlife in federal lands. As the Court stated in *McKelvey* v. *United States, supra,* 260 U.S. at 359, "[i]t is firmly settled that Congress may prescribe rules respecting the use of the public lands. It may sanction some uses and prohibit others, and may forbid interference with such as are sanctioned."

Contrary to the district court, this result does not conflict with "traditional doctrines concerning wild animals" (J.S. App. A, p. 3a). Those doctrines essentially declare the states' paramount control over wildlife in respect to their citizens. They do not entitle the states to regulate wildlife on federal lands over the objection of the federal government. No state has an interest in wild animals on federal lands sufficient to defeat the Congress' power to protect them.

While *Geer* v. *Connecticut,* 161 U.S. 519, and decisions following it, have sustained the state's police

power to regulate the killing of wildlife, *Geer* itself recognized that the power to regulate game, which passed to the states from the English common law "and remains in them at the present day," exists only "in so far as its exercise may be not incompatible with, or restrained by, the rights conveyed to the Federal government by the Constitution" (161 U.S. at 528).[20] This Court has never recognized "property" or regulatory rights in the states over wildlife that preclude federal legislation in this area. "No doubt it is true that as between a State and its inhabitants the State may regulate the killing and sale of [wildlife], but it does not follow that its authority is exclusive of paramount powers." *Missouri* v. *Holland,* 252 U.S. 416, 434.[21]

Thus, the states' police powers over wildlife do not limit the federal government's power under the Prop-

[20] See also *Hunt* v. *United States, supra,* 278 U.S. at 100; *Manchester* v. *Massachusetts,* 139 U.S. 240, 262; *United States* v. *State of Washington,* 384 F. Supp. 312, 335, 342 (W.D. Wash.). Cf. *Lacoste* v. *Department of Conservation,* 263 U.S. 545.

[21] See also *Toomer* v. *Witsell,* 334 U.S. 385, where the Court invalidated, as repugnant to the Privileges and Immunities Clause (Art. IV, Section 2, Clause 1), a South Carolina statute imposing prohibitory licensing fees on non-residents fishing for shrimp in the three-mile maritime belt off the coast of that state. South Carolina sought unsuccessfully to justify the discrimination on the basis of its "special property interest" (*id.* at 399–400) in wildlife. In rejecting this contention the Court said that "[t]he whole ownership theory, in fact, is now generally regarded as but a fiction expressive in legal shorthand of the importance to its people that a State have power to preserve and regulate the exploitation of an important resource" (*id.* at 402; footnote omitted). Moreover, the Court pointed out that this regulatory power could be exercised in the marginal sea only in the absence of a conflicting federal regulation of the fishery (*id.* at 388, 393, 394, 406).

erty Clause (or the Commerce Clause), and do not defeat an otherwise legitimate exercise of constitutional authority such as the Act at issue here. To say this is simply to recognize the result of the Supremacy Clause of the Constitution (Article VI, clause 2).

B. The Act is valid under the Commecre Clause

In seeking to sustain the constitutionality of the Wild Free-Roaming Horses and Burros Act in the district court, the government invoked, in addition to the Property Clause, the Commerce Clause. The district court rejected this on the following basis (J.S. App. A, pp. 5a–6a):

> No evidence was presented to support this theory; in fact, all the evidence establishes that the wild burros in question here do not migrate across state lines. Further, the Congress made no findings to indicate that it was in any way relying on the Commerce Clause in enacting this statute. This argument must fail.

We believe it unnecessary for the Court to reach this point since, in our view, the Act is constitutional as a valid exercise of Congress' power under the Property Clause. But the Commerce Clause does, in any event, provide an independent basis for sustaining this legislation.

The district court's objection that Congress made no findings indicating reliance on the Commerce Clause is not well-taken. The constitutionality of legislation under the Commerce Clause does not depend on whether Congress formally invoked the Clause. See, *e.g.*, *Heart of Atlanta Motel, Inc.* v. *United States*, 379

U.S. 241, 252–253. And Congress is not required to make any particularized findings in order to legislate under the Clause. *Perez* v. *United States*, 402 U.S. 146, 150; *Katzenbach* v. *McClung*, 379 U.S. 294, 299 ("no formal findings were made, which of course are not necessary").

Moreover, the fact that the particular animals seized and removed here may not have migrated across state lines does not render the Act unconstitutional. Wild horses and burros in general do range across state lines, and Congress was well aware of this (see Senate Hearing, *supra*, note 16, at 45, 52, 61, 63). Regardless whether this interstate movement alone is sufficient to sustain Congress' power to regulate them under the Commerce Clause (see *Thornton* v. *United States*, 271 U.S. 414, 425; *Cerritos Gun Club* v. *Hall*, 96 F. 2d 620, 624–627 (C.A. 9); *Cochrane* v. *United States*, 92 F. 2d 623, 627 (C.A. 7), certiorari denied, 303 U.S. 636) the legislative history discloses other connections with interstate commerce as well.

For example, wild free-roaming horses and burros are objects of interest to amateur students of nature and professional scientists, who travel in interstate commerce to observe and study them.[22] Moreover, the legislative history shows that Congress was

[22] *E.g.*, Protection of Wild Horses on Public Lands, Hearings on H.R. 795, H.R. 5375 and Related Bills Before the Subcommittee on Public Lands of the House Committee on Interior and Insular Affairs, 92d Cong., 1st Sess., 78, 99, 110, 134, 161, 196, 199 (1971); Senate Hearing, *supra* note 16, at 69, 122, 128, 138, 142, 143. The Act itself provides for the establishment of an advisory board composed of persons with "special knowledge about protection of horses and burros, management of wildlife, animal husbandry, or natural resources management." Section 7, 16 U.S.C. 1337.

concerned with the commercial exploitation of wild horses and burros and that the Act was designed in part to prevent such exploitation. The Senate Committee found that they "have been cruelly captured and slain and their carcasses used in the production of pet food and fertilizer"; it was "the expressed intent of the committee to remove the possibility of monetary gain from exploitation of these animals" (S. Rep. No. 92–242, 92d Cong., 1st Sess. 1–2, 4 (1971)). The House Committee likewise sought to end the "commercialization" of these animals by eliminating "the processing of wild horses and burros into pet food" (H.R. Rep. No. 92–480, 92d Cong., 1st Sess. 4 (1971)).[23]

Thus, the effect upon interstate commerce of the commercial exploitation of wild horses and burros, as well as the interstate movement of the live animals themselves and the persons interested in observing them, empowered Congress to enact appropriate legislation. That legislation is no less valid because it serves other purposes as well. *Heart of Atlanta Motel, Inc.* v. *United States,* 379 U.S. 241, 257; *Oklahoma* v. *Atkinson Co.,* 313 U.S. 508, 528.

Further, this is not a case in which the federal

[23] The Act accordingly makes it a crime to process the remains of a wild horse or burro into "commercial products" (Section 8(a)(4), 16 U.S.C. 1338(a)(4)), and forbids the sale of the remains of a deceased animal "for any consideration, directly or indirectly" (Section 3(d), 16 U.S.C. 1333(d)). The commerce power, as well as the property power extends to such commercial acts affecting interstate commerce even where the entire process, through consumption of the products, takes place within one state. *Wickard* v. *Filburn,* 317 U.S. 111.

regulation unduly intrudes upon local affairs (cf. *United States* v. *Bass,* 404 U.S. 336, 349–350) or in which a "relatively trivial impact on commerce [is used] as an excuse for broad general regulation of state or private activities." *Maryland* v. *Wirtz,* 392 U.S. 183, 196–197 n. 27. Wild free-roaming horses and burros are of national importance; they are, as Congress found, "living symbols of the historic and pioneer spirit of the West; * * * they contribute to the diversity of life forms within the Nation and enrich the lives of the American people" (Section 1, 16 U.S.C. 1331). In protecting them from capture, harassment and death, Congress was not improperly intruding upon legitimate state and private activities but was legislating within its authority under the Commerce Clause.

CONCLUSION

The judgment of the district court should be reversed.

Respectfully submitted.

ROBERT H. BORK,
Solicitor General.
PETER R. TAFT,
Assistant Attorney General.
A. RAYMOND RANDOLPH, JR.,
Deputy Solicitor General.
WILLIAM F. SHEEHAN, III,
Assistant to the Solicitor General.
EDMUND B. CLARK,
DIRK D. SNEL,
Attorneys.

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